IN THE SUPREME COURT OF MICHIGAN

APPEAL FROM THE MICHIGAN COURT OF APPEALS

S.C. Docket No. 126706-7
C.A. Docket No. 242645
C.A. Docket No. 243489
L.C. No. 99-000732-CK

126206-7

RICHARD V. STOKAN,
Plaintiff/Appellee,

v.

HURON COUNTY, a Michigan Municipal corporation,
Defendant/Appellant.

DEFENDANT/APPELLANT'S SUPPLEMENTAL BRIEF AS REQUESTED BY ORDER OF THE COURT PURSUANT TO MCR 7.302

DANIEL P. DALTON (P44056)
ANDREY T. TOMKIW (P47341)
Tomkiw Dalton, plc
Attorneys for Defendant/Appellant
321 Williams St.
Royal Oak, MI 48067
(248) 591-7000; Fax: (248) 591-7790

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases:

Michigan Court Rules:

Statutes:

STATEMENT OF ORDERS APPEALED FROM AND JURISDICTION

Defendant/Appellant Huron County ("Huron County" or "Defendant") files this Brief pursuant to this Honorable Court's Order pursuant to MCR 7.302(G)(1). Defendant/Appellant Huron County sought leave to appeal in the Court of Appeals of the Trial Court's Order entered on *May 31, 2000*, granting Plaintiff/Appellee's Motion for Summary Disposition; the Trial Court's Order of *June 18, 2001* granting in part Plaintiff/Appellee's partial Motion for Summary Disposition and sanctioning Defendant/Appellant; the Trial Court's Judgment dated *April 25, 2002* and the Trial Court's Order of *July 1, 2002* denying Defendant/Appellant's Motion to Set Aside the Judgment. In addition, Appellant sought the reversal of the Trial Court's denial of Appellant's *July 9, 2002* Motion for Case Evaluation Sanctions against Appellee. The Court of Appeals affirmed the Trial Court's decisions in its July 8, 2004 decision. Appellant filed leave to appeal from the Court of Appeals judgment based on MCR 7.302(B)(3) because the issue in this matter involves legal principles of major significance to the State's jurisprudence and under MCR 7.302(B)(5) because the decision of the Court of Appeals is clearly erroneous. In an order dated March 10, 2005, the Michigan Supreme Court ordered Appellant to prepare a supplemental brief on the interpretation of Resolution 23-83. **(Exhibit 1).**

QUESTION PRESENTED

I. HURON COUNTY RESOLUTION 23-83 REQUIRES A RETIREE TO BE AGE 55 OR OLDER AT THE TIME OF RETIREMENT *AND* TO ELECT TO REMAIN UNDER THE HEALTH PLAN. THE COURT OF APPEALS RULED PLAINTIFF/APPELLEE MAY COLLECT BENEFITS EVEN THOUGH HE WAS NOT 55 WHEN HE LEFT THE COUNTY'S EMPLOY AND DID NOT ELECT TO REMAIN UNDER THE PLAN. SHOULD APPELLEE BE ALLOWED TO COLLECT BENEFITS?

Plaintiff/Appellee Answers: "No."

Defendant/Appellant Answers: "Yes."

Court of Appeals Answered: "No"

STATEMENT OF FACTS

The issue in this case is whether Plaintiff Stokan is entitled to receive health care benefits from Defendant Huron County, pursuant to Resolution 23-83, which was passed by Huron County's Board of Commissioners on March 8, 1983. That Resolution provided that the County would provide health benefits to certain employees upon retirement and pay all or part of the premium, depending on the formula and requirements specified in the Resolution as long as the employee was 55 years of age when he or she retired and as long as the employee elected to remain under the health care plan.

A. Resolution 23-83

Resolution 23-83 provided, in pertinent part, the following with respect to health care benefits provided to some employees upon retirement:

> WHEREAS, it is desirious [sic] to provide additional vision and dental health care for current county employees, except those whose benefits are determined by or based upon the F.O.P contract; and further to provide health care benefits to **current** county employees **upon retirement** from county service after this date.
>
> * * *
>
> BE IT FURTHER RESOLVED, that the premium for the county employee health care benefit plan, as it may be constituted from time to time, shall be paid by the County **for current employees**, including elected officials, but excluding those employees whose benefits are determined by or based upon the F.O.P. contract, **upon retirement** from county service after the date of this resolution as follows, **if an election is made** by them **to remain** under such plan:
>
> 1. The County of Huron shall pay 50% of such premium for such retired employee having at least 10 years of service with the County and being of the age of 55 or older.
>
> 2. The County of Huron shall pay 75% of such premium for such retired employee having at least 15 years of service with the County and **being of the age of 55 or older**.

3. The County of Huron shall pay 100% of such premium for such retired employee having at least 20 years of service with the County and being of the age of 55 or older or for such employee having at least 10 years of service with the County and being of the age of 60 or older.

(Exhibit 1) (emphasis added).

As is clear from the plain language of the Resolution, and as stated by the Huron County Clerk, Peggy Koehler, in her Affidavit: "To be eligible to receive County paid retirement health benefits, a retiring employee must qualify for those benefits **at the time of retirement from active service**." **(Exhibit 2)**(emphasis added). Plaintiff's contrary interpretation of the Resolution is that an employee of Huron County need only have served the minimum number of years to be eligible for retirement health benefits even though he ceased being an employee and stopped being covered by Huron County's health insurance for over six (6) years prior to reaching age 55. Plaintiff further contends that the references to minimum age requirements in the Resolution merely dictate when retirement benefits begin and are not relevant to eligibility for such benefits even though the level of premiums paid (0%, 50%, 75% or 100%) is, in part, expressly dependent upon the age of the employee upon retirement.

In fact, if an employee waits until age 60 to retire, he/she will have 100% of premiums paid by the County even if he/she only had 10 years of service. An employee who is at least 55 but less than 60 years old upon retirement is entitled to premiums paid at a 100% level only if he/she had at least 20 years of service; otherwise the County will pay either 75% or 50% of the premiums, depending on if he/she had at least 15 or at least 10 years of service, respectively. The Resolution has no provision for the County to pay premiums for health benefits to employees who retire before reaching age 55. That is the crux of the instant case.

These are the questions of fact and law that must now be resolved by this Court on *de novo* review.

B. Plaintiff's "Retirement"

Plaintiff became Sheriff of Huron County on January 1, 1973. In 1988, Plaintiff decided not to run for re-election. Consequently, on December 31, 1988, sixteen (16) years after he was sworn in as Sheriff, Plaintiff left his position as Sheriff and terminated his employment with Huron County. (Complaint ¶¶ 7-8). At the time Plaintiff's employment terminated with Huron County, he was just 48 years old. (Complaint ¶ 11). It should be noted that Plaintiff's decision not to run for re-election at age 48, resulting in his being forced out of office at the end of his term on December 31, 1988, does not reasonably constitute "retirement" from employment. (**Exhibit 2** Koehler Affidavit ¶ 8).

Upon terminating his employment with Huron County, Plaintiff was no longer covered by Huron County's health insurance. (Tr. 161-62). Rather, he became employed by the Michigan Sheriffs' Association and his health insurance was provided through that employer. (Tr. 183-84).

C. Huron County Properly Denied Plaintiff's Request to Resurrect Insurance Coverage

It is undisputed that for more than six (6) years after leaving the employ of Huron County on December 31, 1988, Plaintiff was not insured through Huron County's insurance plan, but was insured through other insurance policies. (April 27, 2000 Hearing Transcript, p. 13). There is never a claim by Plaintiff that he was entitled to health coverage by Huron County during this period. Just prior to turning age 55, however, on February 12, 1995, Plaintiff sought to be covered again by the Huron County health insurance plan, effective when he turned age 55. Complaint ¶¶ 18-19.

Peggy Koehler, Huron County Clerk, testified in her Affidavit that the County's policy and practice in administering County Resolution 23-83 required individuals to be qualified for

benefits at the time of retirement from active service in order to be eligible for County-paid retirement health benefits. (**Exhibit 2**, ¶ 6). She further testified, in her Affidavit, that to qualify for retirement health benefits, an employee must retire from active service, and, at that time, elect to remain under the health insurance plan. (**Exhibit 2**, ¶ 4). In addition, she testified that an "individual not choosing to remain under the health insurance plan upon retirement cannot not (sic) be added on at a later time." (**Exhibit 2**, ¶ 5). With respect to Plaintiff, specifically, Koehler testified that he did not "retire" from County service, did not elect to remain under the County health insurance plan upon leaving employment with the County, and did not qualify for benefits under Resolution 23-83 at the time he left office. (**Exhibit 2**, ¶¶ 7-9).

No evidence was presented by Plaintiff to dispute any of the factual statements made by Koehler other than a broad, conclusory—but inaccurate and unsupportable—contention that the language of Resolution 23-83 granted coverage to Plaintiff despite his being only age 48 at the time of "retirement" and despite his having not continued to be covered by the County's health insurance plan at the time of "retirement."

ARGUMENT

I. THE PROPER INTERPRETION OF HURON COUNTY RESOLUTION 23-83 REQUIRES A RETIREE TO BE 55 AT THE TIME OF RETIREMENT AND ELECT TO REMAIN UNDER THE HEALTH CARE PLAN.

The clear language of Resolution 23-83 requires an employee to be 55 years of age at the time he retires *and* elect to remain under the health plan when he retires. The Appellee is not entitled to the payment of health insurance premiums in this matter as (i) he was not 55 years old when he left employment with Huron County as required by the Resolution and; (ii) did not elect to remain under the health plan and therefore is precluded from attempting to re-enter the plan now.

A. Standard of Review

This Court performs a *de novo* review of a trial court's decision granting a motion for summary disposition brought under MCR 2.116(C)(10). ***Singer v. American States Ins.***, 245 Mich.App. 370, 373-74 (2001). Likewise, the interpretation of contractual language is an issue of law that is reviewed *de novo* on appeal. ***Id.***

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and any other documentary evidence in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. ***Id.*** All reasonable inferences are resolved in the nonmoving party's favor. ***Id.***

B. The Clear Language of Resolution 23-83 Compels the Decision that an Employee *must* be at Least Fifty-Five years of Age *and* Elect to Remain Under the Plan.

In reviewing a breach of contract claim, "the language of the contract is to be given its ordinary, plain meaning and technical, constrained constructions should be avoided." ***Singer***, 245 Mich. App. at 374. Similarly, ordinances and resolutions are to be interpreted consistent with their plain meaning if they are clear and unambiguous. ***Adrian Mobile Home Park v. City of Adrian***, 94 Mich. App. 194 (1980). The "cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." ***D'Avanzo v. Wise & Marsac, P.C.***, 223 Mich.App. 314, 319 (1997). Here, the Circuit Court completely misinterpreted Huron County's Resolution 23-83 and, in doing so, improperly granted summary disposition on liability to Plaintiff.

As noted above, Resolution 23-83 provided that health insurance premiums for retiring employees would be paid "**upon retirement** from county service ... **if an election is made by them to remain under such plan.**" (Exhibit 1) (emphasis added). Furthermore, the Resolution states that the County would pay "75% of such premium for **such** retired employee having **at**

least 15 years of service with the County and being of the age of 55 or older." *Ibid.* (emphasis added).

The Circuit Court found as follows: "The undisputed facts seem to be that the Plaintiff did retire at age 48 and that he turned 55 years of age on February 12th of 1995 and that just prior to that time, his turning 55, he applied for health care benefits through the County and he was denied." (4/27/00 Tr., 13). The Circuit Court then proceeded to interpret the Resolution in a manner that ignored the requirements for eligibility.

First, the Court found that the Resolution's reference to age 55 merely meant that Plaintiff "has to be 55 years old to receive the benefit," and rejected Defendant's position that Plaintiff had to be eligible for the retirement health benefit at the time he "retired." (4/27/00 Tr., 16-17). It arrived at this faulty interpretation by a tortured consideration of the following hypothetical situation that the Circuit Court Judge used to justify his ruling:

> [I]f I worked for Huron County from age 18 to 54 – so, I worked 36 years, I would be denied benefits; but if worked for the County from age 35 to 55, that's ten years (sic), I would receive those benefits.

(4/27/00 Tr., 16-17).

The Circuit Court then stated: "I cannot imagine that this resolution was intended to reach that result." As a result of his personal determination of fairness and good policy, the Circuit Court ruled that "the resolution means that the benefit accrues when the period of employment is met even though it may not be available until the person reaches age 55."

The Circuit Court performed a similarly faulty analysis with respect to the other primary issue raised by Defendant: whether the employee has to have elected to remain under the County's health insurance at the time of retirement in order to be eligible for the retirement health insurance benefit. Again, the Circuit Court analyzed a hypothetical situation in ruling that such an interpretation was unreasonable:

> If I'm 18 and I work until I'm 28, I'm entitled to the benefit but I can't get it for another almost 30 years. It would be unreasonable I believe to require that I make an election at that time. I don't know whether I'm going to need the benefit. I don't know whether I'm going to be alive at that time.

(4/27/00 Tr., 17).

The Circuit Court then held that there was no time requirement on electing to be covered by the health insurance policy other than prior to receiving the benefit. *Ibid.*

On November 26, 1996, the Court of Appeals decided a case with almost exactly the same facts as the instant case and ruled against the employee's claim for benefits. ***Douglas v. City of Saline***, 1996 WL 33348870, No. 185668 (November 26, 1996) (unpublished, attached as **Exhibit 3**). In that case, the Chief of Police retired/resigned at age 47 and sought to force the City to reinstate his health insurance coverage eight (8) years later when he turned age 55.

The City of Saline's resolution stated that "all city employees who retire after twenty-five (25) years of service to the City, and have reached the age of fifty-five (55) years as of the date of such retirement, shall continue to receive full payment by the City of the premiums for their medical and life insurance coverage in effect on the date of such retirement." ***Id.*** This Court wrote the following:

> Plaintiff claims that because he met the resolution's length of service requirement prior to his resignation, once he reaches the age of fifty-five, even though he resigned his position at age forty-seven, he should be considered to be "retired," and defendant [City] should then "continue," after the seven-year interruption, to pay his insurance premiums.
>
> The plain language of the provision renders plaintiff's argument meritless. Plaintiff recognizes that he ceases to have insurance coverage from the time of his resignation until he reaches the age of fifty-five. Thus, even assuming that plaintiff will be considered "retired" when he reaches age 55, the resolution cannot apply and defendant is not required to pay any premiums because no insurance will be "in effect on the date of such retirement." Plaintiff offers a **constrained interpretation** to an unambiguous provision.

Id. (emphasis added).

Clearly, in ***Douglas***, the material factor in granting summary disposition in favor of the

City, not the employee, was that the Chief of Police was not age 55 when he "retired" and was not still covered by the City's health insurance policy at the time he turned age 55. Even though he met the City's 25-year service requirement, he was not entitled to have his insurance resurrected after more than a seven-year interruption in coverage.

In the instant case, instead of a Chief of Police resigning at age 47, we have a County Sheriff leaving office at age 48. In both cases, the employee had an interruption of over 6 years during which he was not covered by the health insurance provided by the governmental employer. Contrary to the sensibilities expressed by Circuit Court Judge Higgins, the key to obtaining government-paid health insurance upon retirement, in both ***Douglas*** and the instant case, was the employee continuing to be covered by such insurance at the time when eligibility for the retirement health insurance benefit would have become effective: **age 55**. The fact that the Chief of Police in ***Douglas*** had 25-plus years of service, and Sheriff Stokan had 15-plus years of service, met one requirement for receiving retiree health insurance coverage, but not the remaining eligibility factors.

Plaintiff Stokan, in the instant case, would have been eligible for the County's health insurance upon retirement "if an election [was] made ... to **remain** under such plan," and if he met the years-of-service and age requirements. Like Chief of Police Douglas, Sheriff Stokan met only the years-of-service factor. In 1995, when Stokan requested retirement health insurance benefits beginning on his upcoming birthday on February 12, 1995, he was not electing to **"remain"** under the County's health insurance policy as required by Resolution 23-83. It is undisputed that he had not been covered by the County's health insurance policy since December 1988, when he left his position as Sheriff. Therefore, just as Chief Douglas was unsuccessful in his claim that he was seeking to "continue" to receive health insurance benefits from the City of

Saline when he had not been covered by the insurance for the 7 years prior to turning age 55, Plaintiff Stokan cannot successfully claim that his request for health benefits in 1995 constituted an "election to **remain**" under the County's health insurance plan, after a similar 6-plus year interruption in coverage.

The Circuit Court was bound to follow and interpret the language in Resolution 23-83 – it had no authority to substitute its own language and his impose his personal choices concerning when it would be fair or reasonable to decline to provide retirement health insurance benefits. See, ***Nordman v. Calhoun***, 332 Mich. 460, 465 (1952) (courts may not distort language that is clear and intelligible); ***Oakland County Prosecutor v. 46th District Judge***, 76 Mich. App. 318, 325 (1977) (courts must enforce the language as written); ***The Raven, Inc. v. City of Southfield***, 399 Mich. 853 (1977) (courts are bound by the plain meaning of the applicable language).

Had Plaintiff Stokan remained employed by the County until age 55, he would have remained covered by the County's health insurance plan and could have elected to remain covered by the plan thereafter, upon retirement at (or after) age 55. Instead, he chose to "retire" prior to age 55, at just age 48, when he decided not to run for re-election. He ceased being covered by the County's health insurance plan at that point in time and did not, and could not, elect to remain covered by such plan. Therefore, like any other County employee who leaves employment prior to age 55, he gave up the opportunity to receive County-paid health benefits upon retirement.

C. Other Language in Resolution 23-83 Clarifies that a Claimant for Retirement Health Insurance Benefits Must Be at Least 55 at the Time of Retirement

The "proper approach" in interpreting a particular phrase in a contract "is to read the phrase as a whole, giving the phrase its commonly used meaning." ***Henderson v. State Farm Fire and Cas. Co.***, 460 Mich. 348, 356 (1999). Contractual language "should be viewed as a

whole and read to give meaning to all its terms[;] conflicts between clauses should be harmonized, and [the language] should not be interpreted so as to render it unreasonable. ***South Macomb Disposal Authority v. American Ins. Co.***, 225 Mich. App. 635, 653 (1997) (citing, ***Fresard v Michigan Millers Mut. Ins. Co.***, 414 Mich. 686, 694 (1982)).

In its Decision granting summary disposition to Plaintiff as to liability, the Circuit Court ruled that the reference to "age of 55 or older" in the Resolution merely indicated that Plaintiff "has to be 55 years old to receive the benefit" and did not have to be 55 years old when he retired in 1988. (4/27/00 Tr., 16-17). However, this nonsensical interpretation conflicts with other language in the Resolution.

As discussed above, Plaintiff was ultimately awarded benefits by the Circuit Court under the section of Resolution 23-83 that stated: "2. The County of Huron shall pay **75%** of such premium for such retired employee having **at least 15 years of service** with the County **and** being of the **age of 55 or older**" (emphasis added). However, the other two (2) numbered sections of the Resolution reveals the intent of the language and demonstrates that the Circuit Court's interpretation was unreasonable given the entire language of the Resolution.

The first section stated: "1. The County of Huron shall pay **50%** of such premium for such retired employee having **at least 10 years of service** with the County and being of the **age of 55 or older**" (emphasis added). The third section stated: "3. The County of Huron shall pay **100%** of such premium for such retired employee having **at least 20 years of service** with the County **and** being of the **age of 55 or older or** for such employee having **at least 10 years of service** with the County and being of the **age of 60 or older.**" (emphasis added).

These three (3) sections demonstrate that benefits "upon retirement" for employees who elect to "remain" covered under the County's health insurance plan were as follows:

a. Huron County would pay premiums for employees who are at least **age 55 upon** retirement, pursuant to the following formula:

i) **50%** if they have **10 years** of service;

ii) **75%** if they have **15 years** of service; and

iii) **100%** if they have **20 years** of service.

b. Huron County would pay **100%** of the premiums for employees who **wait until at least age 60** to retire, as long as they have a minimum of 10 years of service.

Huron County Resolution 23-83.

The Circuit Court Judge's opinion that the age references in Resolution 23-83 were solely related to establishing "when" benefits would be received, and not related to eligibility for benefits, conflicts with the language in the Resolution providing a different, more lucrative, benefit for retiring employees who are at least 60 years old when they retire. The formula specified in the Resolution offers an incentive to County employees to remain employed to at least age 55 and an extra incentive to stay employed to at least age 60. An employee who retires before reaching age 60 will **not** have 100% of the premiums for continuation of County health insurance benefits paid by the County unless he/she has at least 20 years of service. If he has 10 years of service but less than 15 years of service, and is at least 55 years old at the time of retirement, the County is to pay just 50% of the premium. But if that same employee waits until age 60 to actually retire from active service, the County will pay 100% of the premium. That is the incentive for remaining employed with the County instead of retiring earlier.

In addition, those who stop working before age 55 tend to have more earning potential than those who are retiring at age 55. For instance, a 35 year old with ten years experience working for Huron County would have twenty more years to earn income, accrue pension benefits, and invest in an IRA or 401K. A person nearing retirement would not have these opportunities, thus it would be unfair to allow someone with a greater amount of time and

earning potential to "double dip" by utilizing both the Huron County Plan and whatever other plans he may be enrolled in.

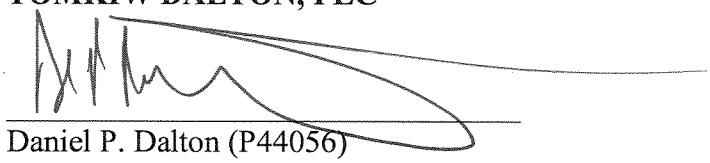
Because Resolution 23-83 provides different levels of funding for health insurance depending upon the employee's age at the time of retirement, the references to age 55 and age 60 in the Resolution are not merely to indicate **when** the employee would be entitled to receive benefits – as incorrectly ruled and interpreted by the Circuit Court. Viewing the language in context and as a whole, it is clear that the intent of the Resolution was to grant retirement health benefits depending upon when employees leave the employ of the County, both in terms of years of service **and** in terms of chronological age at the time of retirement. Those **two factors** are mentioned together in each subsection relating to the portion of premiums that the County would pay toward health insurance. The youngest retirement age referenced in the Resolution is age 55. Accordingly, the Circuit Court's interpretation that "age of 55" did not relate to the time when the employee actually retires was incorrect and inconsistent with the remaining language in the Resolution.

CONCLUSION

For the foregoing reasons Appellant respectfully requests this court lend Resolution 23-83 its proper interpretation by holding that the language of the Resolution requires an employee to be at least 55 years of age at the time of retirement and elect to remain under the plan. We pray that this court reverse the Appellate decision and remand to the Circuit Court with instructions to enter judgment in favor of Appellant.

Respectfully submitted,

TOMKIW DALTON, PLC

By: 

Daniel P. Dalton (P44056)
Andrey T. Tomkiw (P47341)
Attorneys for Defendant/Appellant
321 Williams St. Royal Oak, MI 48067
Tel. 248-591-7000
Fax 248-591-7790

Dated: March 21, 2005